COURT NO. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 78 of 2003

Union of India ... **Appellant.**

Versus

MACT/Additional Distt.Judge,
Dehradun and others. … **Respondents.**

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award, dated 22-01-2003, passed in M.A.C.T. Petition No. 254 of 1994, Smt. Sunita Agrawal and 2 others Vs. Union of India and another, by the Motor Accident Claims Tribunal/Addl. District Judge, IV F.T.C. Dehradun ***(hereinafter referred to as the Tribunal)***, whereby the learned Tribunal has awarded a sum of Rs. 7,71,100/- along with interest @ 6% per annum in favour of the claimant-respondent no. 2 to 4 as against the Opposite Party No.1 –appellant. Aggrieved, Union of India (Opposite Party No.1) has come up in appeal with the prayer for setting aside the impugned judgment and award on the ground of quantum of award as well as that the deceased was not an authorised passenger of the military vehicle involved in the accident.

Brief facts are that claimant-respondent nos. 2 to 4 have filed claim petition under Section 166 of the Act before the learned Tribunal for compensation for the injuries sustained and consequent death of Vijay Kumar Agarwal **(the deceased)** in a motor occurred on 6-3-1994 due to rash and negligent driving by the driver of Truck No. 78 E-20896-M, alleging therein that the deceased, who was working as clerk in State Bank of India

Chakrata was travelling by the said truck from Korawa to Chakrata. The truck was being driven rashly and negligently by its driver. When the vehicle reached near Browari, the driver lost control over the truck with the result the truck fell into a ***Khadd.*** Deceased sustained injuries and succumbed to his injuries on the spot, therefore, claim petition has been filed by the legal heirs and dependents of the deceased. Opposite Parties contested the claim petition and alleged that the accident in question was result of vis-major and the accident was not the result of rash and negligent driving by its driver. Deceased was not an authorised passenger and was traveling at his own risk. No permission was taken by him before boarding in the truck, therefore, the Opposite Parties-appellant are not liable to pay compensation.

Learned Tribunal framed three issues in the case. **Issue No. 1** related to rash and negligent driving by the driver of the ill-fated truck. **Issue No.2** related to the authority of the deceased to travel by the said truck. **Issue No. 3** related to compensation and relief. After hearing both the parties and considering the evidence on record, the learned Tribunal came to the conclusion on Issue No.1 and 2 that the deceased died as a result of injuries sustained by him due to rash and negligent driving by the driver of the truck involved in the accident. Learned Tribunal was of the view on the death of a passenger travelling by the vehicle, may he be there at his own will, the owner is responsible to pay the compensation. On Issue No. 3, the learned Tribunal found that the total income of the deceased at the time of his death was Rs. 5950/- per month and he was an employee of the Bank. The Tribunal thus found that the total income of the deceased was Rs. 5950 x 12 = 71,400/-. After deducting 1/3rd towards personal expenses of the deceased, the remaining amount comes to Rs. 47,600/-. Deceased was aged 35 years and this fact has not been controverted by the O.P.-appellant. Therefore, the learned found that the deceased comes in the age group of 35-40 years. The multiplier of 16 was accordingly applied to determine

the total loss of dependency, which comes to Rs. 7,61,600/-. The Tribunal has also awarded Rs. 2000/- towards funeral expenses, Rs. 5000/- towards loss of consortium and Rs. 2500/- as loss of estate, thereby total compensation of Rs. 7,71,100/- has been awarded along with interest @ 6% per annum, as directed in the impugned judgment and order.

We have heard the learned Standing Counsel (Central Government) for the appellants as well as learned counsel for the claimants-respondents no. 2 to 4 Sri B.P. Nautiyal and have carefully gone through the entire material on record including the impugned judgment and award.

In has been argued on behalf of the appellant that the finding of the learned Tribunal that the claimants are entitled to compensation for the death of deceased, who was travelling in the military truck without authority, is perverse and the appeal deserves to be allowed on this score alone. We have considered the submissions of the appellant from all the four corners of the case in the light of the material available on record. We are not inclined to accept this argument for the simple reason, ***firstly,*** that it is not the case of the appellant that the presence of the deceased in the vehicle in question at the time of accident was not in the knowledge of the driver. They have not led any such evidence before the learned Tribunal, which could be sufficient to hold that the employees of the appellant had resisted the entrance of the deceased in the truck before it met with the accident. ***Secondly***, the appellant has produced Sri M.K.Goyal as D.W.1. From the perusal of the testimony of this witness, the argument of the appellant is not substantiated. It is a thing of common knowledge that in the military vehicles, civilians cannot have access without the consent of the occupants of the military truck. The important circumstance, which goes against the appellant, is that it is admitted to them that the deceased had died in the accident involving the military truck. From the side of the appellant, no such evidence has been led to

explain as to how an unauthorized person, i.e. deceased, had dare travel by a military vehicle. Moreover, it is also not a case of the O.P.-appellant that the truck involved in the accident was exclusively a goods carrier. All these circumstances coupled with the testimony of P.W. 2, Digamber Chauhan, who has given ocular account of the accident, are sufficient to discard the submissions made on behalf of the appellant. The learned Tribunal has already considered the contention of the appellant by framing Issue No. 2 on this point. In our opinion, the finding of the Tribunal recorded on Issue Nos. 1 and 2 does not call for any interference by this Court.

So far as the submission challenging the quantum of compensation is concerned, we have already narrated the details of the income of the deceased in the earlier part of the judgment. We are of the opinion that the learned Tribunal has arrived at the correct conclusion in holding that the claimant-respondents no. 2 to 4 are entitled to get Rs. 7,71,100/- as compensation for the death of the deceased and we find nothing to disagree with the findings regarding determination of compensation of the learned Tribunal. Considering the entire material, we find that the amount of compensation determined by the Tribunal is just and supported by evidence on record. In the result, the appeal is devoid of merit and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

The amount is deposit with this Court shall be transmitted to the Motor Accident Claims Tribunal concerned. The claimant-respondents shall be at liberty to withdraw the amount.

24-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP